

The Commonwealth of Massachusetts
Division of Professional Licensure
239 Causeway Street, Boston, MA 02114
Board of Embalming & Funeral Directing
www.state.ma.us/reg/boards/em
617-727-1718

Establishment Certificate Application--Fee \$35.00

TO: Establishment Certificate Applicants
FROM: Board of Embalming & Funeral Directing
RE: **Change of Ownership for Funeral Establishments**

Please be advised that in order for the Board to review your request for Change of Ownership, you must mail one copy of your establishment proposal to each Board Member (list enclosed) and three copies to the Board office.

Applications will not be scheduled for Board consideration until at least 30 days after *all* required material have been received by the Board.

Three (3) copies of the completed application must be returned to:

Board of Embalming & Funeral Directing
239 Causeway Street
Boston, MA 02114

Please contact the Board at (617) 727-1718 for dates of future Board meetings.



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www.mass.gov/dpl/boards/em
617-727-1718

Establishment Certificate Application--Fee \$35.00

Est. Certificate #: _____

I (we) hereby make application to the Board of Embalming & Funeral Services to certify

the facility located at _____ to be

registered as a funeral home for the storage, preparation and public viewing of dead

human remains. This facility will be used as the _____

(main office, branch office)

of the _____

Legal name of funeral service entity (and d/b/a if applicable)

Signature: _____

Proprietor, partner or representative of corporation

Print Name: _____

Social Security Number / FID Number _____

Note: Ownership information must be displayed on a sign at the main entrance of the funeral home.

This application has been reviewed by the Board on _____ and has been

Date

approved/disapproved for the issuance of an Establishment Certificate in accordance with

the laws of the Commonwealth and the Rules & Regulations of this Board.

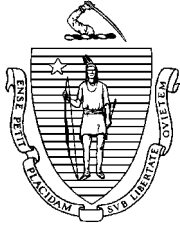
Approval required by three members of the Board.

Signed: _____

Facility Inspected: _____

Signature

Date



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Information to be Submitted for Funeral Home Changes of Ownership

When there is a change of ownership at any licensed funeral establishment, all of the following information must be submitted to the Board at least thirty (30) days prior to the effective date of that change of ownership. Please be advised that no transfer of ownership will be considered by the Board earlier than 30 days after all of the required information has been submitted. Three copies of this information must be prepared and mailed to the Board office.

Current Type 3 licensure is required for ownership of a funeral home.

The Board reserves the right to require the submission of additional information if deemed necessary.

1. Name, address, and telephone number of each funeral establishment affected by the transaction;
2. The business or trade name, if any under which each such funeral establishment is operated prior to the proposed effective date of the transaction;
3. The business or trade name and Federal ID or Social Security Number under which each such funeral home will be operated after the effective date of the transaction;
4. A completed funeral establishment certificate application for each funeral home affected by the transaction, completed by the party acquiring the interest;
5. A letter from the seller's legal counsel describing the details and mechanics of the transaction;
6. A copy of any purchase and sale agreement for any real estate which is to be transferred as part of the transaction;
7. A copy of the purchase and sale agreement or bill of sale for any business assets or tangible or intangible personal property, which is to be transferred as part of the transaction (includes business assets, right to use facility name, etc.);
8. Copies of both sides of any and all stock certificates issued or transferred in connection with the transaction (Originals will have to be presented when the parties appear before the Board for final approval of the transaction);
9. Written certification from each party to the transaction, under the pains and penalties of perjury, that that party is in compliance with all applicable federal and state laws relating to taxes (This would apply only to parties which are partnerships or corporations --individual registrants are already required to provide such certification as a condition of license renewal); and
10. Written certification from each party to the transaction, under pains and penalties of perjury, that that party is in satisfactory compliance with all reporting requirements set forth in the Board's regulations, including but not limited to pre-need contract information.
11. A copy of the letter which will be sent to each pre-need customer, informing them of the ownership change and their rights to continue, transfer, or cancel those arrangements.

12. Copies of any employment contracts, if any, between the new owner/operator and any of the seller/transferor's individual owners or employees.
13. Written certification from each party to the transaction, under pain and penalty of perjury, that that party is in compliance with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., and 28 CFR Part 35.
14. Written certification from each party to the transaction, under pain and penalty of perjury, that that party is in compliance with all applicable requirements of the US Occupational Safety and Health Administration.

The Board reserves the right to inspect your facility pursuant to 239 CMR 3.05, prior to the Board's approval of your application for an establishment certificate, to verify compliance with the above two federal statutes.

Inspection for Compliance with the ADA

239 CMR 3.06 (a) requires every licensed funeral establishment to be accessible to individuals with disabilities to the extent required by all applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq., and 28 CFR Part 35, and by all applicable provisions of any other federal or state laws and regulations. Typically, an investigation by the Funeral Board investigator includes verification that the funeral home is accessible to individuals in wheel chairs (via a ramp) and has handicap-accessible bathrooms.

Inspection for Compliance with OSHA

239 CMR 3.06 (d) notes that every funeral establishment must include a preparation room equipped with sanitary flooring, a flush rim sink, floor drain and ventilation, a reduced pressure backflow preventer or air gap separation at the meter or property line, and the necessary equipment, instruments and supplies for the preparation and embalming of dead human bodies for burial and transportation. It further notes that such preparation room and equipment shall comply with all applicable requirements of 239 CMR 3.07 and 239 CMR 3.12, and all applicable requirements of other federal, state and local laws, including but not limited to all applicable regulations of the United States Occupational Safety and Health Administration. Typically, an investigation by the Funeral Board investigator includes an assessment of whether there is OSHA documentation and record keeping pertinent to testing for formaldehyde, hazardous waste disposal containers and paperwork, etc.

15. If your corporation is a limited liability company, written certification from each party to the transaction, under pains and penalty of perjury, that that party is in compliance with the insurance requirements contained in 239 CMR 3.16(3).

Specific Information to be Provided by Seller/Transferor

1. The name, address and telephone number of the seller/transferor;
2. Whether the seller/transferor is a sole proprietorship, partnership, corporation, limited liability company (LLC) or limited liability partnership;
3. If the seller/transferor is anything other than a sole proprietorship, the names and addresses of all persons or business entities which hold an ownership interest of 5% or more in the seller/transferor;

Specific Information to be Provided by the New Owner/Operator

If the new owner/operator is a sole proprietor:

- the name, address, telephone number and registration number of the buyer;

If the new owner/operator is a partnership or a limited liability partnership (LLP):

- the name, address and telephone number of the partnership
- the name, address, telephone number and registration number of each partner;
- the percentage of ownership interest held by each partner after the transaction in question;
- information about whether each partner is a general partner or a limited partner;
- a copy of the partnership agreement in effect immediately after the transaction; and
- a copy of the minutes of the partnership meeting at which the transaction was authorized.
- if the partnership is a limited liability partnership (LLP), proof of the general and professional liability insurance required by 239 CMR 3.16(3).

If the new owner/operator is a corporation:

- the name, address and telephone number of the corporation
- the total number of shares of stock which the corporation is authorized to issue;
- the total number of shares of stock which have actually been issued and are outstanding;
- the name, address, telephone number and registration number (if any) of each shareholder who holds 5% or more of the issued and outstanding shares of stock on the date of the transaction, and the percentage of the total number of shares actually issued and outstanding which each such shareholder owns;
- copies of the corporation's articles of incorporation;
- copies of the corporation's by-laws; and
- copies of the minutes of the shareholders' meeting at which the transaction was authorized.

If the new owner/operator is a limited liability company (LLC):

- the name, address and telephone number of the limited liability company (LLC);
- the name, address, telephone number and registration number (if any) of each member of the LLC;
- the percentage of ownership interest held by each member of the LLC;
- if the limited liability company has managers, the name, address, telephone number and registration number (if any) of each manager of the LLC;
- a copy of the operating agreement by which the LLC was formed;
- a copy of the by-laws which govern the operation of the LLC;
- a list of any and all other funeral establishments in which the LLC, or any of its members or managers, holds an ownership interest; and
- proof of the general and professional liability insurance required by 239 CMR 3.16(3).

If any partnership interest or shares of stock in the new owner/operator will be held by another partnership, corporation, LLP or LLC, rather than by an individual, the partnership, corporation, LLP or LLC holding that ownership interest must:

- provide the information listed above about itself as well, plus:
- a list of all other funeral establishments in Massachusetts in which that partnership, corporation, LLP or LLC holds an ownership interest; and
- for each such funeral establishment, a list of all the persons employed at that establishment who are registered with the Board and the position each such person holds

If the new owner/operator is a corporation, please note the attached sheet which contains recommended language for inclusion in the articles of incorporation and corporate by-laws

If you require additional information please call the Board office at (617) 727-1718.

RECOMMENDED CHANGES IN ARTICLES OF ORGANIZATION AND BY-LAWS

Articles of Organization

Insert in Article V the following language:

“PURSUANT TO ANY EXISTING STATUTES, RULES AND REGULATIONS OF THE COMMONWEALTH, AS THEY PRESENTLY STAND OR AS THEY MAY BE AMENDED, NO SHARES SHALL BE ISSUED OR TRANSFERRED IF THE EFFECT OF SUCH TRANSACTION WOULD BE TO REDUCE THE PERCENTAGE OF SHARES OWNED BY INDIVIDUALS WHO ARE DULY REGISTERED AND LICENSED AS FUNERAL DIRECTORS BY THE COMMONWEALTH OF MASSACHUSETTS TO LESS THAN A MAJORITY OF THE THEN ISSUED AND OUTSTANDING SHARES.”

By-Laws

1. Insert, in the Article regarding officers of the corporation, the following language:

“THE PRESIDENT OF THE CORPORATION SHALL AT ALL TIMES BE A DULY REGISTERED AND LICENSED FUNERAL DIRECTOR IN THE COMMONWEALTH OF MASSACHUSETTS.”

2. Insert, in the Article regarding issuance of stock, the following language:

“PURSUANT TO ANY EXISTING STATUTES, RULES AND REGULATIONS OF THE COMMONWEALTH, AS THEY PRESENTLY STAND OR AS THEY MAY BE AMENDED, NO SHARES SHALL BE ISSUED IF THE EFFECT OF SUCH TRANSACTION WOULD BE TO REDUCE THE PERCENTAGE OF SHARES OWNED BY INDIVIDUALS WHO ARE DULY REGISTERED AND LICENSED AS FUNERAL DIRECTORS BY THE COMMONWEALTH OF MASSACHUSETTS TO LESS THAN A MAJORITY OF THE THEN ISSUED AND OUTSTANDING SHARES.”

3. Insert, in the Article regarding transfers of stock, the following language:

“PURSUANT TO ANY EXISTING STATUTES, RULES AND REGULATIONS OF THE COMMONWEALTH, AS THEY PRESENTLY STAND OR AS THEY MAY BE AMENDED, NO SHARES SHALL BE TRANSFERRED IF THE EFFECT OF SUCH TRANSACTION WOULD BE TO REDUCE THE PERCENTAGE OF SHARES OWNED BY INDIVIDUALS WHO ARE DULY REGISTERED AND LICENSED AS FUNERAL DIRECTORS BY THE COMMONWEALTH OF MASSACHUSETTS TO LESS THAN A MAJORITY OF THE THEN ISSUED AND OUTSTANDING SHARES.”

4. Insert, in the Article regarding amendment of the by-laws, the following language:

“NOTWITHSTANDING THE FOREGOING, THE PROVISIONS OF ARTICLE __, SECTION __ REQUIRING THE PRESIDENT OF THE CORPORATION TO BE A REGISTERED AND

LICENSED FUNERAL DIRECTOR IN THE COMMONWEALTH OF MASSACHUSETTS; AND THE PROVISIONS OF ARTICLE ___, SECTION __ AND ARTICLE ___, SECTION __ RESTRICTING THE ISSUANCE OR TRANSFER OF SHARES IF THE EFFECT OF SUCH A TRANSACTION WOULD BE TO REDUCE THE PERCENTAGE OF SHARES OWNED BY REGISTERED AND LICENSED FUNERAL DIRECTORS TO LESS THAN A MAJORITY; MAY BE AMENDED OR REPEALED ONLY BY A TWO-THIRDS MAJORITY VOTE OF THE SHARES OF EACH CLASS OF CAPITAL STOCK AT THE TIME OUTSTANDING AND ENTITLED TO VOTE.”

Current Board Members

Please mail one complete copy to each Board Member

Edward Mazur
64 Sewall Street
Ludlow, MA 01056

Judith A. McCarthy
Registry Division
Boston City Hall, Room 213
Boston, MA 02201

Kim L. Pineau
492 Rock St.
Fall River, MA 02720

David Brezniak
1251 Washington Street
Newton, MA 02465

Three copies to the Board office

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